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April 6, 2007

VIA TELECOPY 202.219.3923

Jeff. S. Jordan, Esq.
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5906, The Schwan Food Company, Political Action Committee

Dear Mr. Jordan:

This letter is submitted on behalf of the Schwan Food Company, Inc., Political Action Committee (hereinafter "Schwan's PAC"), Respondent in the above-referenced complaint. Notice of the complaint was received March 23, 2007, and this response is timely filed. Attached is a Designation of Counsel executed by Schwan's PAC's Treasurer.

None of the circumstances asserted in the document denominated "Complaint" filed by Robert T. Quasius forwarded with the Notice, even if true, constitute a violation of any obligation under either the Federal Election Campaign (FEC) Act, as amended, or the Act's implementing regulations. In accordance with 11 C.F.R. § 111.7, the General Counsel should find that there is no reason to believe that Respondent has committed any violation or statute or regulation and dismiss the complaint or recommend to the Commission that it dismiss the complaint.

ESSENTIAL ALLEGATIONS OF COMPLAINT IN MUR 5906

The essential allegations of the complaint submitted in this matter fall into one of three categories:

- that Schwan's PAC, a separate segregated fund (SSF), receives but does not properly report "contributions" from its connected organization representing the value of rent, utilities, telephone, website usage, email, and commercial and corporate aircraft usage;

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- that Schwan's PAC does not properly report receipts and expenditures related to "events," including "events at the Landmark Bistro" – a venue allegedly owned by the connected organization – and picnics, and does not properly report "operational costs"; and
- that Schwan's PAC has not properly solicited or received contributions from persons that are not officers or employees of the connected organization.

These allegations are each based on a misunderstanding of the reporting and solicitation restrictions under the FEC Act and its implementing regulations. Schwan's PAC, as detailed below, is in full compliance with applicable federal requirements regarding each of these allegations.

Reporting of "In-Kind Contributions" to Schwan's PAC

The complaint confuses "in-kind contributions" made by a SSF for federal election purposes with the connected organization providing assistance for the "establishment, administration, and solicitation of contributions to a separate segregated fund." The complaint contains no allegation that the connected organization provides "in-kind contributions" for federal election purposes.

Under the FEC Act's implementing regulations:

The terms *contribution* and *expenditure* shall not include—

The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation . . .

11 C.F.R. § 114.1(a)(2)(iii). In fact, use of corporate funds for such establishment and administrative expenses is explicitly permitted:

Use of treasury monies. Corporations, labor organizations, membership organizations, cooperatives, or corporations without capital stock may use general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions to its separate segregated fund.

11 C.F.R. § 114.5(b). The recently revised Federal Election Commission Guide, *Corporations and Labor Organizations* (Jan. 2007), amplifies the regulatory text:

The costs of running the SSF (operating expenditures) may be defrayed with the treasury funds of the connected organization, that is, with funds derived from commercial activities or dues payments.
114.5(b). Treasury money can be used, for example, to pay for office

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space, phones, salaries, utilities, supplies, bank charges and fundraising activities. 114.1(b). There are no dollar limits on these disbursements, *and they are not reported to the FEC*. The connected organization may either pay these costs directly or establish a separate administrative account to be used solely for the SSF's administrative and fundraising expenses.

Guide, *Corporations and Labor Organizations* at 8, col. 1 (emphasis supplied).

The complaint alleges nothing more than what is explicitly permitted. The activities cited in the complaint, rent, utilities, telephone, website usage, email, and aircraft usage, are all well within the costs of running the SSF. There is, then, no reason to believe that any violation has occurred based on this allegation.

Reporting of Receipts and Expenditures at Events

The complaint alleges the SSF has "hosted picnics, free of charge for PAC members and families" and that there are no reports "of the costs or receipts" for these events. Read broadly, the complaint appears to allege that the SSF is obligated to provide an accounting for these events. The FEC Act's implementing regulations, however, provide otherwise:

Disclosure. Separate segregated funds are subject to the following disclosure requirements:

(1) A corporation or labor organization is not required to report any payment made or obligation incurred which is not a contribution or expenditure, as defined in Sec. 114.1(a), except those reporting requirements specifically set forth in this section.

11.C.F.R. § 114.5(e)(1). Hosting a picnic does not constitute a "contribution" within the meaning of the referenced definition:

The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

11 C.F.R. § 114.1(a)(1). The complaint does not allege that any expenditure by the SSF in connection with picnics is the direct or indirect expenditure of funds in connection with a candidate, political party, committee, organization, or any other person in connection with a federal election. The complaint does not, therefore, allege any violation in this regard and should be dismissed.

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With respect to events held at the Landmark Bistro, for which persons are allegedly charged up to \$50 admission and provided a meal, the connected organization does hold a monthly Speaker Series at the Landmark Bistro, and we respectfully submit that this is the event to which the complaint refers. The connected organization, however, does not charge any admission to these events, and provides breakfast. While PAC members are invited, other community members are as well. The Speaker Series is not an event hosted by the SSF or at which solicitations for the SSF are made. Attached is a recent invitation to one of the Speakers Series events at the Landmark Bistro. It does not purport to be, and is not, a Schwan's PAC event.

We respectfully submit that this allegation cannot support reasonable cause to believe that a violation has occurred. The SSF cannot be made to disprove every unsupported allegation that at some time, somewhere, it failed its obligations to report received contributions where, in fact, no PAC fundraising was held.

Contributions Received From Affiliated Companies

Finally, the complaint alleges that certain contributors disclosed as having contributed more than \$200 at any time to the Schwan's PAC are not employees of The Schwan Food Company. The complaint asserts that only officers of The Schwan Food Company, are employees of The Schwan Food Company, and that the "other contributors are all employees of numerous subsidiaries or their spouses" and that such reporting is incorrect.

This is a distinction without a difference. Regardless of whether the reported contributors are "employees" of The Schwan Food Company, they are employees of the class of persons who may be solicited for contributions and from whom receipt of contributions is permitted. As provided in the FEC Act's implementing regulations, "A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families." 11 C.F.R. § 114.5(g); see AO 1994-11. The complainant asserts that the reported contributors are all employees of subsidiaries or their spouses.

The Schwan Food Company is a holding company for Schwan's subsidiaries and affiliates. By disclosing contributors by their affiliation to the connected organization directly, the Commission and the public is able to better assess the activities of the connected organization, without reference to employer names which may not be completely recognizable as that of a subsidiary or affiliate of the connected organization.

This allegation, then, cannot support a reasonable cause to believe that a violation has been committed and the complaint should be dismissed.

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Statement Regarding Discussions with PAC Treasurer

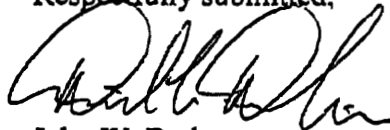
The complaint also contains the following statement:

Gordon Crow of Schwans PAC stated to me in 2005 that same issue [sic] arose between Schwans PAC and the State of Minnesota Campaign and Disclosure Board, and as a result Schwans PAC is no longer authorized as a Minnesota political committee. Despite explicit knowledge that in-kind contributions must be reported, Schwans' PAC continues to file FEC reports that include no report in-kind contributions [sic] from Schwans.

(emphasis in original). Again, the complaint confuses reportable in-kind contributions from an SSF for an federal election purpose with the connected organization providing assistance for the "establishment, administration, and solicitation of contributions to a separate segregated fund." To the extent that the ambiguous reference to the "same issue" is properly read as a reference to complainant's confusion on the permissible assistance of a connected organization (and we respectfully submit that is the most natural reading), then this statement does not add to any reasonable cause to believe that a violation has been committed.

For the foregoing reasons, the General Counsel should find that there is no reason to believe that Respondent has committed any violation or statute or regulation and dismiss the complaint or recommend to the Commission that it dismiss the complaint.

Respectfully submitted,



John W. Bode
David L. Durkin
Counsel for Respondent

OFW:jac

cc: Mr. Gordon Crow
Mr. Mark Simonette

Attachments

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STATEMENT OF DESIGNATION OF COUNSEL
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MUR # 5906

NAME OF COUNSEL: JOHN W. BODE AND DAVID L. DURKIN

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

4/5/07
Date

GORDON CROW
Respondent/ Client Signature

PAL TREASURER
Title

RESPONDENT/CLIENT The Schwan Food Company PAL
(Please Print)

MAILING
ADDRESS: 115 W. COLLEGE DRIVE

MARSHALL, MN 56258

TELEPHONE- HOME (_____)

BUSINESS (507) 537-8714

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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